

Henry A. Waxman

**Statement of Rep. Henry A. Waxman  
Rules Committee on H.R. 5, the Help Efficient, Accessible, Low-Cost, Timely Healthcare  
(HEALTH) Act of 2011  
March 20, 2012**

I am in opposition to H.R. 5, which is combines two, unrelated topics into one anti-consumer, anti-patient bill. The first part of the bill not only tramples state's rights, but also eviscerates the rights of injured patients, shielding negligent corporations, insurance companies, drug manufacturers and others from liability for wrongdoing. The second part of the bill repeals the independent board tasked with making recommendations to Congress to thoughtfully provide recommendations to address cost growth in Medicare while protecting the seniors and people with disabilities who depend on that program for their health care.

It is no accident that we are considering this legislation during this week when we are marking the second anniversary of the Affordable Care Act. This bill is a thinly veiled, partisan attempt to distract the American public from its successes in covering young people, in reducing costs for seniors, in providing improved health benefits for all Americans.

Title One of the bill before us -- the medical malpractice provisions -- have been around for over a decade. That it has not been enacted under Democratic or Republican Congresses and Presidents is itself a verdict on its merits.

But let's be clear, this bill is much broader than traditional medical malpractice legislation. It protects manufacturers, distributors, suppliers, marketers -- also "promoters" of health care products -- even if they intentionally cause harm. Insurance companies and HMOs are protected as well. And especially disturbing to me: The bill shields drug and device manufacturers with complete immunity from punitive damages as long as their products have been approved by the FDA. This simply cannot stand.

This bill preempts state action in an area that has traditionally been theirs. It also fails to tackle the core issues involved in medical malpractice -- reducing medical errors, awarding appropriate and adequate compensation when an injury occurs, and reducing health care costs.

The second part of the bill would repeal the Independent Payment Advisory Board, or IPAB, which was designed as a backstop provision, if the costs of Medicare increase more than anticipated. IPAB is charged with recommending evidence-based policies to improve Medicare without harming patients.

Repealing IPAB is the height of hypocrisy. The main Republican attack on the Affordable Care Act is that we cannot afford it. And then they attack the new law for the comprehensive approach it takes to controlling costs. And they do it the old fashioned way: through fear.

I want to be clear about what the IPAB is and isn't. It's not a rationing board. The board is explicitly, in statute, prohibited from rationing. It is also prohibited from making

recommendations that increase out of pocket costs or cut benefits. So, unlike the Republican plan, seniors - and Medicare - are safe.

IPAB doesn't take away the role of Congress. The IPAB makes recommendations, but Congress still can and should act on those recommendations.

Contrast this independent board with the Republican plan that would turn Medicare into a voucher, shift costs on seniors, and leave medical decisions in the hands of insurance company bureaucrats, not physicians.

While there is no amendment that could make this legislation worthwhile -- in the interest of a fair and open process -- I ask that the Rules Committee provide for an open rule. Many of the amendments offered by Democrats highlight the serious anti-patient provisions of the bill, and I believe the American public would greatly benefit from hearing the Republican party defend providing near-immunity for corporations at the expense of patients who have been maimed, irreparably injured, or even killed. Further, I support equal time for debate for the three committees of jurisdiction.